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SERVICE DATE - JANUARY 4, 2002

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

DOCKET NO. AB-6 (Sub-No. 390X)

**The Burlington Northern and Santa Fe Railway Company - Abandonment Exemption -
Between Loving and Pecos Junction, NM, and Between Pecos Junction, NM, and Rustler
Springs, TX**

BACKGROUND

In this proceeding, Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152.50 seeking exemption from the requirements of 49 U.S.C. 10903 in connection with the abandonment of its line between M.P. 196.00 near Loving and M.P. 217.20 near Pecos Junction in Eddy County, New Mexico and between M.P. 0.00 near Pecos Junction, New Mexico and M.P. 25.34 near Rustler Springs, in Culberson County, Texas, a total distance of 46.54 miles. A map depicting the rail line in relationship to the area served is appended to the report. If the notice becomes effective, the railroad will be able to salvage track, ties and other railroad appurtenances and to dispose of the right-of-way.

DESCRIPTION OF THE LINE

According to BNSF, this line of railroad connects the rural community of Loving, New Mexico through an unincorporated rural area in Eddy County, New Mexico and Culberson County, Texas with a sulphur plant in rural Culberson County, Texas. The corridor varies in width from 150 feet to 400 feet wide with the majority of the right-of-way being 200 feet wide. The Pecos Valley Railway Company constructed the line from Loving, New Mexico to a connection with The Panhandle Railway Company at the New Mexico-Texas State line in 1891. Acquisition of property was generally from the US government by the Act of Congress approved March 3, 1875. On April 19, 1898, Pecos Valley Railway Company was acquired by The Eastern Railroad Company of New Mexico. On February 1, 1912 The Eastern Railway Company of New Mexico was acquired by The Atchison, Topeka, and Santa Fe Railway Company. In 1969 The Atchison, Topeka and Santa Fe Railway Company completed the construction of the line from Pecos Junction to the sulphur plant in Culberson County, Texas. The Atchison, Topeka and Santa Fe Railway company merged with the Burlington Northern Railroad Company in 1996 to become The Burlington Northern and Santa Fe Railway Company.

No local traffic has moved over this line for at least two (2) years and any overhead traffic on the line can be rerouted over other lines. This line was last used on July 23, 1999. The right-of-way may be suitable for use for other public purposes. On part of the properties

involved, title considerations may affect the conveyance of the land for use other than railroad purposes. The line does not contain federally granted rights-of-way. The proposed abandonment will eliminate 7 public crossings and 12 private crossings.

ENVIRONMENTAL REVIEW

BNSF submitted an environmental report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. BNSF served the environmental and historical reports on a number of appropriate Federal, state, and local agencies as required by the Surface Transportation Board's environmental rules [49 CFR 1105.7(b)]. We have reviewed and investigated the record in this proceeding.

The United States Department of Agriculture, Natural Resources Conservation Service and the United States Department of the Interior, Bureau of Land Management, Carlsbad Field Office have requested that the bridge located in T.26S., R.29E., Section 19: NE 1/4 NW 1/4 be left intact due to the nesting and roosting activities of cliff swallows and various species of bats occurring on that bridge. Accordingly, we will recommend a consultation condition requiring that BNSF contact the United States Department of Agriculture, Natural Resources Conservation Service and the United States Department of the Interior, Bureau of Land Management, Carlsbad Field Office prior to commencement of any salvage activities on this project.

The United States Department of the Interior, Fish and Wildlife Service, New Mexico Ecological Services Field Office is concerned that the proposed action “may affect” threatened, endangered, proposed species, critical habitat, candidates, or species of concern. If the action area has suitable habitat for any of these species, they recommend that a species-specific survey be done during the appropriate flowering or breeding season to evaluate any possible project-related impacts. In addition, to minimize the likelihood of adverse impacts to all birds protected under the Migratory Bird Treaty Act (MBTA), they recommend that construction activities occur outside the general migratory bird nesting season of March through August, or that areas proposed for construction during the nesting season be surveyed, and if necessary, avoided until nesting is complete. Accordingly, we will recommend a consultation condition requiring that BNSF contact the United States Department of the Interior, Fish and Wildlife Service, New Mexico Ecological Services Field Office prior to commencement of any salvage activities on this project.

The State of New Mexico Environment Department is concerned that the project, as described, may, or may not, require National Pollutant Discharge Elimination System (NPDES) Construction Storm Water General Permit coverage. If only rails and ties are removed and the railroad bed is stabilized with ballast, vegetation, etc., which will not be further disturbed, then NPDES will not likely be required. If, however, five or more acres of the existing cover is disturbed, this project will require appropriate NPDES permit coverage. Among other things, this permit requires that a Storm Water Pollution Prevention Plan (SWPPP) be prepared for the site and that appropriate Best Management Practices (BMPs) be installed and maintained both

during and after construction to prevent, to the extent practicable, pollutants in storm water runoff from entering waters of the U.S. Accordingly, we will recommend a consultation condition requiring that BNSF contact the State of New Mexico Environment Department prior to commencement of any salvage activities on this project.

The United States Department of the Interior, Bureau of Land Management, Carlsbad Field Office is concerned that grazing allotment boundary or pasture fences may be damaged during salvage operations. They have requested that if salvage operations, such as removal of rails or ties, result in damages to existing fences, these fences be repaired prior to ceasing the salvage operations. Several grazing allotment boundary or pasture fences run parallel to or tie into the railroad right-of-way and they wish to protect the integrity of the fences. Accordingly, we will recommend a consultation condition requiring that BNSF contact the United States Department of the Interior, Bureau of Land Management, Carlsbad Field Office prior to commencement of any salvage activities on this project.

The Texas Historical Commission (TX SHPO) has completed their assessment of the potential impact of this project on historic resources, and has concluded that this project will not effect historic properties.

The State of New Mexico Office of Cultural Affairs, Historic Preservation Division (NM SHPO) has advised us that there are several known archaeological resources in the vicinity of the proposed project. Track removal has a potential to adversely effect archaeological resources. Due to the potential for impacting archaeological sites, they have requested that a professional archaeologist conduct a pedestrian archaeological and cultural resource survey along the project location.

The Mescalero Apache Tribe has determined that the proposed abandonment will not affect any objects, sites, or locations important to their traditional culture or religion. Likewise, the Pueblo of Ysleta del Sur has determined that the proposed abandonment, as described, will not affect any sites, locations, and/or objects of traditional cultural or religious significance.

CONDITIONS

We recommend that the following five environmental conditions be placed on any decision granting abandonment authority:

1. To address the concerns raised by the United States Department of Agriculture, Natural Resources Conservation Service and the United States Department of the Interior, Bureau of Land Management, Carlsbad Field Office about the nesting and roosting activities of cliff swallows and various species of bats, BNSF shall, prior to commencement of any salvage activities on this project, contact the United States Department of Agriculture, Natural Resources Conservation Service and the United States Department of the Interior, Bureau of Land Management, Carlsbad Field Office concerning the bridge located in T.26S., R.29E., Section 19: NE 1/4 NW 1/4.

2. To address the concerns raised by the United States Department of the Interior, Fish and Wildlife Service, New Mexico Ecological Services Field Office, BNSF shall, prior to commencement of any salvage activities on this project, contact the United States Department of the Interior, Fish and Wildlife Service, New Mexico Ecological Services Field Office concerning possible impacts to threatened or endangered plant or wildlife species or habitats and birds protected under the MBTA.
3. To address the concerns raised by the State of New Mexico Environment Department, BNSF shall, prior to commencement of any salvage activities on this project, contact the State of New Mexico Environment Department concerning possible impacts to waters of the U.S. from storm water discharge and whether NPDES permit coverage is appropriate.
4. To address the concerns raised by the United States Department of the Interior, Bureau of Land Management, Carlsbad Field Office, BNSF shall, prior to commencement of any salvage activities on this project, contact the United States Department of the Interior, Bureau of Land Management, Carlsbad Field Office concerning possible damage to grazing allotment boundary or pasture fences.
5. The State of New Mexico Office of Cultural Affairs, Historic Preservation Division has indicated that there appears to be archaeological resources in the vicinity of the line to be abandoned which may be adversely affected during salvage operations. Pending resolution of this issue, BNSF shall retain its interest in and take no steps to alter the historic integrity of all sites or structures on the right-of-way until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

CONCLUSIONS

Based on the information provided from all sources to date, we conclude that, as currently proposed, abandonment of the line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and, therefore, no change in operations), discontinuance of service without abandonment and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

If abandonment and salvage of the rail line does take place, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 CFR 1152.28) must be filed with the Surface Transportation Board and served on the railroad within the time specified in the Federal Register notice.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Surface Transportation Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. However, the Board will accept late-filed requests as long as it retains jurisdiction to do so. This request must comply with the Board's rules for use of rights-of-way as trails (49 CFR 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Services (OPS) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPS directly at (202) 565-1592 or mail inquiries to the Surface Transportation Board, Office of Public Services, Washington, DC 20423.

ENVIRONMENTAL COMMENTS

If you wish to file comments regarding this environmental assessment, send an **original and two copies** to Vernon A. Williams, Office of the Secretary, Washington, DC 20423, to the attention of Kenneth Blodgett, who prepared this environmental assessment. **Please refer to Docket No. AB-6 (Sub No. 390X) in all correspondence addressed to the Board. Questions regarding this environmental assessment should be referred to Kenneth Blodgett at (202) 565-1554.**

Recent events involving a principal postal facility within Washington, D.C. may affect for a period of time the receipt of materials mailed to the Board, as well as customer receipt of reply mail sent from the Board. Until the timely delivery of mail has been reestablished, the Section of Environmental Analysis (SEA) requests that individuals filing comments regarding this or other environmental assessments take the following additional steps to ensure receipt of their correspondence during the comment period:

1. Telephone or e-mail the environmental contact indicated above prior to the close of the comment period and inform them that you have mailed a comment.
2. If the comment has not been received, the environmental contact will discuss alternative modes of delivery.
3. Retain a copy of your comment for your records should alternative modes of delivery be necessary.

SEA is committed to carrying out its duties to the public and regrets any inconvenience these new procedures may cause.

Date made available to the public: January 4, 2002.

Comment due date: **January 18, 2002 (15 days).**

By the Board, Victoria J. Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

Attachment

MAP TO BE SCANNED